IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 72 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG sd/-

HONOURABLE MR.JUSTICE D.H.WAGHELA sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
DINESHCHANDRA C. SHAH - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 07/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Date : 07/09/2006

1. Mr Manish R. Bhatt, learned counsel for the Revenue. None for the respondent, though served.

2. The Income Tax Appellate Tribunal, Ahmedabad Bench “C”, in relation to Income Tax Appeal No.1595/Ahd/1990 relating to Assessment Year 1985-86, has referred the following question under section 256 (1) of the Income Tax Act, 1961 to this Court for its opinion:

> *“Whether the Appellate Tribunal is right in law in restoring the matter relating to the assessee's claim for grant of deduction in respect of a sum of Rs. 5,72,011 claimed as trade loss and/or bad debt to the ITO for deciding the same afresh in accordance with the findings given by the Tribunal in assessee's case for A.Y. 1984-85 in ITA Nos. 1157/Ahd/88 and 1594/Ahd/90 dated 18th*

November, 1991 ?"

3.` It is not in dispute before us that for the earlier year of assessment i.e. 1984-85 an identical issue arose before the Tribunal in relation to deduction of the bad debts, the Tribunal held in favour of the assessee observing that the act on the part of the assessee was an act of prudent businessman. The Reference came to be made to this Court for the year 1984-85 which we have answered against the interest of the Revenue in ITR No. 71 of 1996 decided on 6.9.2006.

4. In the present case, the Tribunal has not decided anything in favour of the assessee or against the interest of the Revenue, but has simply observed that, as a fact finding enquiry is required, the matter should be restored to the table of the Assessing Officer for making an enquiry into the allegation of the assessee that he was entitled to deduction of Rs.5.72 lakhs as

trade loss or bad debt.

5. In our opinion, when the Tribunal has not decided anything and has observed that the matter should be remanded back for further enquiry, then, ordinarily, the department should not have made an application for Reference because no order against the interest of Revenue was made.

6. We hold that the Tribunal was right and justified in remanding the matter back to the Assessing Officer for making an enquiry and recording a finding.

7. The Reference is answered against the interest of the Revenue. It is accordingly disposed of. No costs.

Sd/-

[R. S. Garg, J.]

sd/-

[D. H. Waghela, J.]

msp